



# CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY



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LINDA S. ADAMS  
SECRETARY FOR  
ENVIRONMENTAL PROTECTION

ARNOLD SCHWARZENEGGER  
GOVERNOR

Certified Mail: 7003 1680 0000 6167 5653

December 8, 2008

Mr. John Morley, Director  
Mendocino County Environmental Health  
501 Low Gap Road  
Ukiah, California 95482

Dear Mr. Morley:

The California Environmental Protection Agency (Cal/EPA), Office of Emergency Services, Department of Toxic Substances Control, and the State Water Resources Control Board conducted a program evaluation of the Mendocino County Environmental Health Certified Unified Program Agency (CUPA) on October 8 and 9, 2008. The evaluation was comprised of an in-office program review, and field oversight inspections, by State evaluators. The evaluators completed a Certified Unified Program Agency Evaluation Summary of Findings with your agency's program management staff. The Summary of Findings includes identified deficiencies, a list of preliminary corrective actions, program observations, program recommendations, and examples of outstanding program implementation.

The enclosed Evaluation Summary of Findings is now considered final and based upon review, I find that Mendocino County Environmental Health's program performance is satisfactory with some improvement needed. To complete the evaluation process, please submit Deficiency Progress Reports to Cal/EPA that depict your agency's progress towards correcting the identified deficiencies. Please submit your Deficiency Progress Reports to Kareem Taylor every 90 days after the evaluation date. The first deficiency progress report is due on January 7, 2009.

Cal/EPA also noted during this evaluation that Mendocino County Environmental Health has worked to bring about a number of local program innovations, including the development and use of a Hazardous Materials Business Plan (HMBP) Program Guide. We will be sharing these innovations with the larger CUPA community through the Cal/EPA Unified Program web site to help foster a sharing of such ideas statewide.

Mr. John Morley  
Page 2  
December 8, 2008

Thank you for your continued commitment to the protection of public health and the environment through the implementation of your local Unified Program. If you have any questions or need further assistance, you may contact your evaluation team leader or Jim Bohon, Manager, Cal/EPA Unified Program at (916) 327-5097 or by email at [jbohon@calepa.ca.gov](mailto:jbohon@calepa.ca.gov).

Sincerely,

[Original Signed by Don Johnson]

Don Johnson  
Assistant Secretary  
California Environmental Protection Agency

Enclosure

cc: Sent via email:

Mr. Roger Foote, Program Manager  
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501 Low Gap Road  
Ukiah, California 95482

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Mr. Jack Harrah  
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Mr. John Morley  
Page 3  
December 8, 2008

cc: Sent via email:

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Enclosure



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## **CERTIFIED UNIFIED PROGRAM AGENCY EVALUATION SUMMARY OF FINDINGS**

### **CUPA: Mendocino Division of Environmental Health**

**Evaluation Date: October 8 and 9, 2008**

### **EVALUATION TEAM**

**Cal/EPA: Kareem Taylor**

**SWRCB: Sean Farrow**

**OES: Jack Harrah**

**DTSC: Mark Pear**

This Evaluation Summary of Findings includes the deficiencies identified during the evaluation, program observations and recommendations, and examples of outstanding program implementation activities. The evaluation findings are preliminary and subject to change upon review by state agency and CUPA management. Questions or comments can be directed to Kareem Taylor at (916) 327-9557.

	<b><u>Deficiency</u></b>	<b><u>Preliminary Corrective Action</u></b>
1	<p>The CUPA did not correctly report inspection and enforcement information on its Annual Summary Reports for fiscal years (FYs) 04/05 through 06/07.</p> <ul style="list-style-type: none"><li>• In the Annual Inspection Summary Reports (Report 3s), the CUPA did not report the total number of routine inspections that return to compliance for all of the program elements.</li><li>• In the Annual Enforcement Summary Reports (Report 4s), the CUPA did not report the total number of informal and formal enforcement actions for all of the program elements.</li><li>• In Report 4, the CUPA did not report the total amount of penalties assessed and collected.</li></ul> <p><b>CCR, Title 27, Section 15290 (a)(2)(3) (Cal/EPA)</b></p>	<p>By November 10, 2008, the CUPA will submit its FY 07/08 Annual Summary Reports to Cal/EPA that correctly reports:</p> <ul style="list-style-type: none"><li>• the total number of routine inspections that return to compliance for all of the program elements</li><li>• the total number of informal and formal enforcement actions for all of the program elements</li><li>• the total amount of penalties assessed and collected</li></ul>
2	<p>The CUPA did not complete its FY 07/08 Annual Summary Reports by September 30 of this year.</p> <p><b>CCR, Title 27, Section 15290 (Cal/EPA)</b></p>	<p>By November 10, 2008, the CUPA will submit its FY 07/08 Annual Summary Reports to Cal/EPA.</p> <p>The CUPA will submit all subsequent Summary Reports to Cal/EPA by September 30 of each year.</p>

Certified Unified Program Agency (CUPA)  
Evaluation Summary of Findings

3	<p>The CUPA's annual facility permits do not contain issuance or expiration dates.</p> <p><b>CCR, Title 27, Section 15190 (i)(4)(5) (Cal/EPA)</b></p>	<p>By February 9, 2009, the CUPA will issue facility permits that contain issuance and expiration dates to all of its permitted facilities.</p> <p>The CUPA will submit a sample copy to Cal/EPA by the correction due date.</p>
4	<p>The CUPA does not have the following Unified Program (UP) administrative procedures:</p> <ul style="list-style-type: none"> <li>• Procedures for responding to requests for information from government agencies with a legal right to access the information, or from emergency responders, including methods to prevent the release of confidential and trade secret information.</li> <li>• Procedures for forwarding the HMRRP information in accordance with Health and Safety Code sections 25503.5(d) and 25509.2(a)(3).</li> </ul> <p><b>CCR, Title 27, Section 15180 (e) (Cal/EPA)</b></p>	<p>By January 9, 2009, the CUPA will complete its administrative procedures.</p> <p>The CUPA will submit a copy to Cal/EPA with its first progress report.</p>
5	<p>The CUPA has not reviewed its Inspection and Enforcement (I and E) plan annually and updated it as needed. Many of the inspection and enforcement policies the CUPA currently implements are not reflected in the I and E plan. The CUPA should expand on the following I and E plan elements:</p> <ul style="list-style-type: none"> <li>• Provisions for administering all program elements.</li> <li>• Enforcement notification procedures that ensure appropriate confidentiality; and coordination and timely notification of appropriate prosecuting agency(ies).</li> <li>• Identification of all available enforcement options (i.e. red tag, civil, notice and order to abate, AEO).</li> <li>• Uniform and coordinated application of enforcement standards.</li> <li>• Identification of penalties and enforcement actions that are consistent and predictable for similar violations and no less stringent than state statute and regulations.</li> <li>• A graduated series of enforcement actions that may be taken by the UPAs, based on the severity of the violation. (i.e. informal or formal based on violation class)</li> <li>• A description of how the CUPA minimizes or</li> </ul>	<p>By January 9, 2009, the CUPA will review the I and E plan and update the elements listed in the deficiency.</p> <p>The CUPA will submit a copy to Cal/EPA with its first progress report.</p>

Certified Unified Program Agency (CUPA)  
Evaluation Summary of Findings

	<p>eliminates duplication, inconsistencies, and lack of coordination within the inspection and enforcement program.</p> <p><b>CCR, Title 27, Section 15200 (Cal/EPA)</b></p>	
6	<p>The file review indicated that the CUPA is allowing underground storage tank (UST) facilities to operate with expired operating permits.</p> <p><b>HSC, Chapter 6.7, Section 25284 (a)(1) (SWRCB)</b></p>	<p>By November 10, 2008, the CUPA will ensure that all UST's are properly permitted to operate.</p>
7	<p>The CUPA is not requiring existing UST facility owner/operators to submit all of the information on the new forms, A, B, and D, and is not requiring the new forms to be completed for permit renewal. The new forms became effective January 2008 as part of the California Code of Regulations Title 27 and Title 23 revisions.</p> <p><b>HSC, Chapter 6.7, Section 25286 (a); (SWRCB) CCR, Title 23, Section 2711 (a); and CCR, Title 27, Section 15185 (a)</b></p>	<p>By October 9, 2009, the CUPA will ensure that all UST facilities have submitted the new UST forms A, B, and D.</p> <p>Prior to conducting the annual inspection, the CUPA shall review all paperwork submitted for a Permit to Operate and ensure that the tank and piping systems, and the monitoring methods used are sufficiently described and are appropriate for the system. If the forms are incorrect the CUPA shall either correct the current forms, or have the facility owner resubmit new forms that are correct.</p>
8	<p>Out of eight files reviewed, none of the inventories included a Business Activities Page. The permit has the same information on its cover sheet, but the Business Activities Page is part of the inventory, not the permit.</p> <p><b>CCR, Title 19, section 2729.2 (a)(1) (OES)</b></p>	<p>The Business Activities Page is included in the packet handed out to businesses. Starting immediately, the CUPA must have the handlers fill out the page and include it in the business plan. By obtaining the form at the time of inspection, all active businesses should have this form filled out by October 9, 2009.</p>
9	<p>Out of eight files reviewed, six lacked the mandated spill notifications in the emergency response plan (ERP). The two ERPs that did have the required notifications had an outdated 916 number for the State Warning Center. The obsolete number is 916-262-1621. This has been changed to 916-845-8911. The 800 number is still valid.</p> <p><b>HSC, Chapter 6.95, Section 25504 (b); CCR, Title 19, section 2731 (a) (OES)</b></p>	<p>The current version of the boilerplate ERP form used by the CUPA has the correct information. Starting immediately, the CUPA must insure that the business' emergency response plan has spill notification information. If this is done at the time of inspection, all active businesses should have the correct information in their business plan by October 9, 2009.</p>
10	<p>While it is noteworthy that the CUPA inspects all business plan facilities annually, and that the inspector</p>	<p>By January 9, 2009, the CUPA will submit a plan to obtain annual inventory</p>

Certified Unified Program Agency (CUPA)  
Evaluation Summary of Findings

	<p>verifies the inventory and the validity of the other elements of the business plan, it is the responsibility of the <b>business</b> to certify annually that there has been no change in the inventory, and triennially, that the entire business plan has been reviewed. None of the eight files reviewed had annual inventory certifications or 3-year certifications of review by the business.</p> <p><b>CCR, Title 19, Section 2729.5 (a); HSC, Chapter 6.95, Sections 25501(f) and 25505 (c) and (d) (OES)</b></p>	<p>and three year business plan review certifications. Designing a form consistent with the requirements of HSC 25501 (f), 25505 (c) and (d), and CCR, Title19, Section 2729.5(a)(2), and requesting the operator to sign it at the time of inspection will suffice. By October 9, 2009, all active businesses should be up to date.</p>
<b>11</b>	<p>One business (H&amp;W Vineyards) whose file was reviewed was apparently a new business as of November 29, 2007. The business plan was lacking the Business Activities Form, the site map, the entire emergency response plan and the training plan.</p> <p><b>HSC, Chapter 6.95, Section 25505 (a)(2) (OES)</b></p>	<p>Beginning immediately, whenever an incomplete business plan is received, the CUPA must notify the business of the deficiency and give them 30 days to submit the missing elements, per HSC 25505(a)(2).</p>
<b>12</b>	<p>The area plan did not contain a form providing information on the elements within the area plan.</p> <p><b>CCR, Title 19, Section 2720 (c) (OES)</b></p>	<p>By January 9, 2009, the CUPA must complete a reporting form substantially equivalent to the model form shown in CCR, Title19, Section 2720, and append the form to the area plan.</p>
<b>13</b>	<p>The CUPA failed to exercise a graduated series of enforcement for the following Class 1 violation:</p> <ul style="list-style-type: none"> <li>The failure to provide secondary containment certified by a professional engineer for a waste oil tank, which was observed during the January 09, 2008 inspection conducted at Kelly Automotive located at 65100 Drive Thru Tree Road in Leggett, CA.</li> </ul> <p><u>Definition of Class 1 violation:</u></p> <p>A Class I violation means any of the following under HSC section 25110.8.5:</p> <p>(a) A deviation from the requirements of this chapter, or any regulation, standard, requirement, or permit or interim status document condition adopted pursuant to this chapter, that is any of the following:</p> <p>(1) The deviation represents a significant threat to human health or safety or the environment because of one or more of the following:</p> <p>(A) The volume of the waste.</p> <p>(B) The relative hazardousness of the waste.</p> <p>(C) The proximity of the population at risk.</p> <p>(2) The deviation is significant enough that it could result in a failure to accomplish any of the following:</p>	<p>In the future, the CUPA will exercise a graduated series of enforcement on facilities that have chronic and/or severe violations.</p> <p>The CUPA will refresh staff knowledge of the definitions of Class I, Class II and minor violations. A good tool for refresher training may include covering the Cal/EPA "Violation Classification Guidance Document for Unified Program Agencies," which is available on the Cal/EPA website under Unified Program-Publications and Forms.</p> <p>By January 09, 2009, the CUPA will provide violation determination training to its inspectors.</p>

Certified Unified Program Agency (CUPA)  
Evaluation Summary of Findings

	<p>(A) Ensure that hazardous waste is destined for, and delivered to, an authorized hazardous waste facility.</p> <p>(B) Prevent releases of hazardous waste or constituents to the environment during the active or post closure period of facility operation.</p> <p>(C) Ensure early detection of releases of hazardous waste or constituents.</p> <p>(D) Ensure adequate financial resources to pay for facility closure.</p> <p>(F) Perform emergency cleanup operations of, or other corrective action for releases.</p> <p>(b) The deviation is a Class II violation which is a chronic violation or committed by a recalcitrant violator. "Class II Violation" has the same meaning as defined in Section 66260.10 of Title 22 of the California Code of Regulations.</p> <p><b>CCR, Title 27, Section 15200 (f)(2)(c)</b> <b>HSC Sections 25110.8.5 and 25117.6</b> <b>CCR, Title 22, Section 66260.10 and E0-02-003-PP</b> <b>(DTSC)</b></p>	
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**CUPA Representative**

Roger Foote  
(Print Name)

Original Signed  
(Signature)

**Evaluation Team Leader**

Kareem Taylor  
(Print Name)

Original Signed  
(Signature)



## **PROGRAM OBSERVATIONS AND RECOMMENDATIONS**

*The observations and recommendations provided in this section address activities the CUPA are implementing and/or may include areas for continuous improvement not specifically required of the CUPA by regulation or statute.*

1. **Observation:** On the facility inspection reports reviewed, none contained a signed consent to inspect by a facility owner/operator.

**Recommendation:** Cal/EPA recommends that the CUPA include a section on its inspection report where an owner/operator may grant consent by signing his/her name on the inspection report. Signed consent on the inspection report is important because it strengthens any potential enforcement case against a noncompliant facility. This recommendation is based on the "Inspection Report Writing Guidance for UPA's". This document can be found at [www.calepa.ca.gov/CUPA/Documents/2005/InspectionRpt.pdf](http://www.calepa.ca.gov/CUPA/Documents/2005/InspectionRpt.pdf).

2. **Observation:** The CUPA's administrative procedures have not been reviewed since the inception of the CUPA and may not reflect the procedures that the CUPA currently implements. The procedures that appear to be out-of-date are:

- public participation
- records maintenance

**Recommendation:** Cal/EPA recommends that the CUPA review Title 27, Section 15180 (e) on administrative procedures and update its current procedures.

3. **Observation:** The CUPA only classifies Hazardous Waste Generator violations as Class 1, Class 2, or minor in their data management system. Cal/EPA did not find any violation classifications in the inspection report narratives.

**Recommendation:** Cal/EPA recommends that the CUPA begin classifying violations as Class 1, Class 2, or minor on their inspection reports. The classification information may then be transferred to the CUPA's data management system so that completion of future Summary Reports can be more efficient.

Note: In the new Report 4, violations for all program elements are classified as Class 1, Class 2, and minor. The "other" column has been eliminated. For assistance on classifying violations, refer to the violation classification guidance document on the Cal/EPA website at [www.calepa.ca.gov](http://www.calepa.ca.gov).

4. **Observation:** The CUPA was unaware of the regulatory changes to the Annual Summary Reports (3 and 4), the Unified Program Consolidated Forms, and the UST forms.

**Recommendation:** The new forms with the instructions are available on the Cal/EPA website at [www.calepa.ca.gov](http://www.calepa.ca.gov).

5. **Observation:** The CUPA's I and E plan does not include the option to use administrative enforcement orders (AEO) against owners/operators with Class 1 or chronic violations. They do use a "Notice and Order to Abate" adopted in the local ordinance which imposes a penalty (between \$25-\$100 per day) against owners/operators with major or chronic violations.

Certified Unified Program Agency (CUPA)

Evaluation Summary of Findings

**Recommendation:** Cal/EPA recommends adding AEO as another vehicle for formal enforcement. Having the option to use an AEO is important when civil or other formal enforcement options are not successful.

- 6. Observation:** The CUPA's UST inspector conducted the UST site inspection in a thorough and professional manner. His attention to detail and knowledge of code and regulations resulted in an excellent inspection.

**Recommendation:** None.

- 7. Observation:** The CUPA does not have a detailed inspection form.

**Recommendation:** The SWRCB strongly encourages the agency to develop a thorough UST facility inspection form/checklist with citations. The inspection checklist should include the following elements that an inspector can use to verify compliance: tank, piping, sump, under-dispenser, overfill spill bucket, overfill prevention systems, audible/visual alarm, leak detection monitoring sensors, leak detection control panel, cathodic protection, alarm history, tri-annual secondary containment testing, designated operator, employ training, record keeping, etc.

- 8. Observation:** UST inspection forms do not identify Significant Operational Compliance (SOC) items or provide for a summary of these items for tracking purposes, and the database does not track SOC compliance.

**Recommendation:** The SWRCB encourages the CUPA to provide a means for determining SOC compliance during the inspection and provide a means for tracking the compliance in order to provide the data for Report 6.

An inspection "Draft" form has been given to the CUPA. This form is not required to be used by the CUPA. It is an example/tool to help the CUPA identify the SOC items that need to be reported to the SWRCB.

- 9. Observation:** A business plan oversight inspection was conducted on October 8, 2008 at the City of Ukiah wastewater treatment plant. The inspector conducted a complete business plan inspection, covering all elements of the business plan program, including verifying the inventory, updating contact information in the emergency response plan, and verifying the training program, including rosters of the attendees. The inspection also covered waste generation, including universal waste. At the exit interview, the inspector fully explained each violation, and the steps the operator must take to return to compliance. A copy of the inspection report and a checklist summary of the deficiencies was left with the operator at the conclusion of the inspection.

**Recommendation:** None.

- 10. Observation:** The CUPA is including the annual CalARP performance audit (CCR, Title 19, section 2780.5) with the annual Title 27 program self audit, which is a good thing. However, this information is given in terms of a summary of number of stationary sources, rather than a "listing" as required by CCR, Title 19, Section 2780.5.

**Recommendation:** Since the answer to most of the eight elements of CCR, Title 19, Section 2780.5 (b) will be "none", and since the CUPA is inspecting all of the CalARP sites virtually every

## Certified Unified Program Agency (CUPA)

### Evaluation Summary of Findings

year, OES recommends that, in the future, the CUPA list the name of each of the CalARP sites under element (3) “a listing of stationary sources that have been inspected”, and only list the name under the other elements if it applies.

- 11. Observation:** UPCF Form 2731 (the chemical inventory form) was recently modified slightly, both in Title 27 and in Title 19.

**Recommendation:** OES recommends that the CUPA review its alternative spreadsheet inventory form, per CCR, Title 19, Section 2729.3, to ensure that it includes all the information in the new UPCF forms.

- 12. Observation:** The CUPA has improved the frequency of its inspections with regard to its Inspection and Enforcement Plan and with the inspection of other program elements. The CUPA has inspected 691 hazardous waste generators that have been identified by the CUPA. The last three annual inspection summary reports indicate the following:

- 187 hazardous waste generators were identified in FY 04/05 of which 187 were inspected,
- 314 hazardous waste generators were identified in FY 05/06 of which 314 were inspected, and
- 310 hazardous waste generators were identified in FY 06/07 of which 316 were inspected.

The CUPA has inspected 100% of all of its known facilities generating hazardous waste over the past three fiscal years.

**Recommendation:** Please continue with your established inspection completion rate with in the hazardous waste program.

- 13. Observation:** The CUPA was able to demonstrate that most of the complaints which were referred by DTSC from October 1, 2005 to October 1, 2008 were investigated. Follow-up documentation could be found for Complaint Numbers 07-0807-0442, 08-0708-0531, 06-0606-0299, and 08-0408-0317, but not for complaints 06-0706-0359 and 08-0408-0294.

**Recommendation:** Please continue with your prompt response and investigation of all complaints. Tracking of complaints may be improved. Ensure that all complaints are being received by the CUPA from DTSC by providing the e-mail address of the person who should receive complaints to [nlancast@dtsc.ca.gov] complaint coordinator. Investigate and document all complaints referred. Investigation does not always entail inspection, as many issues may be resolved by other means such as a phone call. In any instance, it is suggested that all investigations be documented, either by inspection report or by “note to file” and placed in the facility file.

- 14. Observation:** Although the inspection reports have detailed narratives of the inspector’s observations, they lack a developed description of a facility’s operation and/or manufacturing processes occurring on site.

**Recommendation:** The inspector should develop the observation section of the report to also include facility operations occurring on site so that anyone unacquainted with the facility who may read the report may gain a better appreciation and understanding of the services provided and the industrial processes occurring at the facility.

Certified Unified Program Agency (CUPA)

Evaluation Summary of Findings

**15. Observation:** Inspection reports lack the incorporation of checklists citing regulations and statutes applicable to generators of hazardous waste from Title 22 and the Health & Safety Code.

**Recommendation:** The CUPA may wish to incorporate such checklists for hazardous waste generators from DTSC's website.

Certified Unified Program Agency (CUPA)  
Evaluation Summary of Findings

**EXAMPLES OF OUTSTANDING PROGRAM IMPLEMENTATION**

1. The CUPA has done an outstanding job of encouraging the use of less hazardous alternative chemicals, specifically, substitution of hypochlorite solution for gas chlorine for water treatment.
2. The “Hazardous Materials Business Plan (HMBP) Program Guide” that the CUPA makes available to businesses is a very useful document. It contains blank forms, form instructions, and sample forms that illustrate how each form should be completed. It also outlines the requirements for any exemptions from program requirements.
3. The Mendocino County Department of Environmental Health has issued several Notice and Abatement Orders for Health & Safety Code hazardous materials/waste violations under a County ordinance , for example:
  - Mathews Graves located at 58950 Bell Springs Road was cited for the unreported release of a hazardous material/waste to the environment; next,
  - Mark Wuerfel located at 54500 registered guest in Laytonville, CA was also cited for the unauthorized release of a hazardous material to the environment, next
  - Norm Torres located at 35451 Shimmins Ridge Road in Willits, CA was cited for the storing of a combustible liquid with no secondary containment, improper storage of a hazardous waste, and having no hazardous materials management plan; and lastly,
  - John Athay located at 13711 Powerhouse Road in Potter Valley, CA was cited for the illegal disposal of waste oil as a dust suppressant.
4. The Mendocino County Environmental Health Department has established a permanent household hazardous waste collection center which has greatly aided in diverting household hazardous waste generated from CESQGs and personnel residences from going to municipal landfills.
5. A CUPA staff chairs the Redwood Empire Hazardous Incident Team meetings in which fire agencies and the Mendocino Department of Environmental Health participate. Also, CUPA staff attends County Wide Fire Chiefs meetings. These meetings help the CUPA exchange hazardous materials information with emergency responders.